DISPUTATIO JURIDICA INAUGURALIS

De

PECULIO

Quam

Decreto, atq; Auctoritate Nobiliſsimi ICtorum ordinis in celeberrimâ Academiâ Wittebergenſi,

Sub Præſidio

Dn. CHRISTIANI TAUBMANNI

J. U. D. & P. P. Curiæ Electoralis, Scabinatus, ac Juridicæ Facultatis Aſſeſſoris, Præceptoris, Promotoris atque Affinis ætatem venerandi.

Pro ſummis in utroq; jure conſequendis Honoribus ac Privilegiis.

in Auditorio Majori

ad d. Auguſti

horis ante & pomeridianis

publico examini ſubjicit

CHRISTIAN SIGISMUND Graff

Lichtenburgo Saxo.

WITTEBERGÆ,

Excudebat JOANNES RÖHNERUS, Acad. Typogr. Anno 1647.

FELICITER!

I.

DE PECULIO, variisque ejus ſpeciebus, Chriſto Salvatore Gubernante, Inaugurali hâc Diſputatione pro ingenii modulo acturus, principiò *Definitio* ejus conſideranda venit. Quemadmodum enim jactis anchoris ſtabilitur navis contra procellas: ſic definitionibus cogitur mens noſtra in tranquillum materiæ portum contra ancipites opinionum fluctus. Et quamvis in jure noſtro, *ſecundum l. 202. de R. I.* omnis definitio periculoſa, conemur tamen, ut maximè non conſequamur, Nam ſtudiorum ſalutarium, *ex mente Senecæ de vit. beat. c. 20* etiam citra effectum laudanda tractatio eſt.

II.

Et eſt alia Nominalis, alia Realis.

III.

Nominalis complectitur Etymologiam, Homonymiam, & Synonimiam.

IV.

Etymologia notationem nominis oſtendit.

PEculium dictum quaſi puſilla pecunia, ſive patrimonium [illegible] ſiuum. *Ulpian. in l. 5. D. de Pecul.* & eſt diminutivum à pecunia, quæ dicitur à pecudibus, in quibus tota veterum ſubſtantia conſiſtebat, iiſque neceſſaria ſibi quæque comparabant. [illegible] fundus, domus, eſculenta, pocul[e]nta. *Godd. ad l. pecunia [illegible] V.S.* Unde *pecunia* verbum generaliter ſumptum ſignificat non modò rem mobilem ac quantitatem, ſed & rem immobilem [illegible] ſolum ſpecies & corpora, verum etiam [illegible] *l. pecunia. 178. l. pecunia. 222. l. ſap. 53. D. d. V. S.* Quod [illegible] notâ pecudis pecuniæ nomen accepiſſe ideò, quod [illegible] ta primum æs ſignavit, inde haud inferri poteſt. Ergò [illegible] tantum in ære ſignato conſiſtit. Ideò enim pecudis nota ſignabatur æs, ut ſuccederet pecudibus in exercitio commerciorum. *Godd. ad d. l. 4.* Cum verò res mobiles [illegible] quam [illegible] exercendis negotiis plerumque homines [illegible] pecuniæ origo à [illegible]ctione & commercio [illegible] pro ſubjecta materia ad harum ſignificationem reſtr[illegible] terdum. Ideò [illegible]: Accipiatur enim vel [illegible] aut pro ſolo ſignato pecunia, ſeu numm[illegible]. [illegible] appareret, aut ſpeciem ac certum corpus [illegible] ſiſtens; aut res in quantitate ponderis [illegible] ſtentens ſignificat. *l. 2. § 1. D. de reb. cred.* H[illegible] propriè ſumitur in ſolis nummis aureis atque argenteis [illegible] quod pa[illegible] relicet aut ex [illegible] aut ex [illegible]ctione *l. 8. § [illegible] Maved. l. ſi quis 4. [illegible] D. de reb. cred.* [illegible] ſignificatione [illegible] mobiles ſemper [illegible] *[illegible] 45. Sixtin. de Regalibus [illegible]* Et in d[illegible] hunc [illegible] uxori [illegible] defuncti [illegible] indifferenter mar[illegible] Non verò [illegible] *[illegible] Carpzov. [illegible] part. [illegible] [illegible] p. 2. n. 44. [illegible]*

V. [illegible]

V.

Conſideratâ Etymologiâ, ſe offert Homonymia.

Su[illegible]ur autem vocabulum peculij varie in Jure noſtro. Nonnunquam denotat extremum illud, quod Paterfamilias in recondito habet. *Peculium* enim dicitur, quod præſidij cauſa ſeponitur *l. ſi chorus. 79. §. 1. de Legat. 3. Giphan. in comm. ad Inſt. tit. per quas perſon. nob. acqu. Gail. libr. 2. Obſ. 11. n. 8.* Quandoq; uſurpatur pro omni patrimonio etiam liberi hominis, ſui [illegible], & ple[illegible] [illegible] vè patrimonium *peculium* vocatur. *l. 16 pr. D. ad* [illegible] *Trebell. Meier. in Coll. g. Argentor. lib. 15. 8.* [illegible]. Interdum ſ[illegible] [illegible] [illegible] m[illegible]lieris. *l. 9. §. [illegible]. D. de Jure Dot.* quæ ſunt bona extra c[illegible]m dotis conſtituta, & cum marito traduntur utenda, fruenda, dici ſolent *parapherna* · cum ab ipſa uxore poſſideatur ac ſervantur, proprium ejus peculium. *d. l. 9. W[illegible] parat. d. t. n. fin.* [illegible]mò deniq, ac proprie peculium dicitur id, quod filius vel ſervus patre vel domino permittente proprio jure tractat. Vide *Tr. T[illegible] in comm. ad Plaut. Aſin. Act. 3 ſc. 1. n. 91.*

VI.

Homonymiæ ſuccedit Synonymia.

Vocatur Peculium interdum bona pecularia [illegible] res pec[illegible]la res. *[illegible] [illegible]nes autem 10. J. de Action.* interdum quaſi patrimonium filijfamilias ſeu ſervi. *l. 39. 41. §. ult. D. de pecul.* Dicitur autẽ *quaſipatrimonium* ad differentiam veri. Nam patrimoniũ propriè non [illegible] ſervos aut filiosfamilias, ut nec peculium in liberos. *l. [illegible] terfamilias 195. D. d. V. S.* Q[illegible]v[illegible]s enim ſæpius in Jure repe[illegible] patremfamilias habere pecul[illegible] [illegible] famil[illegible]s patrim[illegible] id tamen non al[illegible], ni[illegible] comparati[illegible] e[illegible]dem eſt ac[illegible]m. Si igitur is, qui [illegible] eſt, poſſidet ea bona, quæ ſervus aut filiusfamilias habet, dicitur patrimonium Et ſi altero juri ſubjectus habet ea bona, quæ patrimonium alias ſignificant, dicitur peculium, & inde *patrimonium* e[illegible] peculium hominis ſui juris [illegible] hominis alieno juri ſubjecti. *l. ult. ad. J. §. actiones quadam 10. d.*

28 Peculium [illegible] nomen est patrimonium [illegible] E. [illegible] lit. A. [illegible]

VII.

Tr[illegible] definitione N[illegible]inali, Re[illegible]

[illegible] p[illegible] [illegible] co ponit [illegible] Appel[illegible] 10. D. de heredit. pet. E[illegible] tot[illegible] m q[illegible] d [illegible] D. [illegible] [illegible] [illegible] d[illegible] [illegible] p[illegible] [illegible]tates. [illegible] 6. C de bon. qu[illegible] 4. [illegible] [illegible]um, in quibus [illegible] p[illegible]llunt o[illegible] & [illegible] & [illegible] 7. [illegible] 4. D. [illegible] per. [illegible] q[illegible] & augeri & [illegible] [illegible] U[illegible] para[illegible] [illegible] Meier. [illegible] 9. [illegible]a [illegible] h[illegible] labor[illegible] xta [illegible]ythag[illegible] [illegible] anima[illegible] Cuja[illegible] 9. Afric[illegible] D. [illegible] L[illegible] E. [illegible] & nomina [illegible] [illegible] d. l. 7. [illegible] 4 & [illegible] D. R[illegible] [illegible] 4. U[illegible] & [illegible] & [illegible] Dn. C[illegible]rp[illegible] [illegible] [illegible] Differentia [illegible] [illegible] patrimon[illegible] [illegible] de pecul. 4. D. [illegible] [illegible]

[illegible]

pecu[illegible] eſſe, pec[illegible]lium facit, ſed ſi tradidit. Deſideratur q[illegible]ippe n[illegible]ra[illegible]s datio *l. non ſtatim. 8. D. d. tit.* Et re, non verbis augenda ſunt peculia *l. 4. §. 1. d. t.*

VIII.

Dividitur autem in Militare atq; Paganum.

IX.

Militare aut eſt Caſtrenſe, aut quaſi Caſtrenſe.

Ca[illegible] pec[illegible]lium [illegible] quod [illegible]iofamilias in militia agenti [illegible]m eſt; ſ[illegible]u quod ipſe in m[illegible] q[illegible]od [illegible] mi[illegible] [illegible] n[illegible] fuiſſet. *l. [illegible] .11. D. de c[illegible]r. pec.* [illegible] [illegible] in generali definitione traditum, iter[illegible] [illegible]it. Differenti[illegible]m ſpecificam c[illegible]nſtituit [illegible] [illegible]. Neceſſariò enim debet occaſione mil[illegible] eſſe acquiſi[illegible] N[illegible] quod erat & ſine militiâ acquiſitur[illegible] d pec[illegible]lium [illegible] non [illegible]ſt. *d. l. 11.* Et q[illegible]idem *vera ac juſta militia* requi[illegible] [illegible]. Quænam verò juſta cenſe[illegible] [illegible]dendum. Et vocatur [illegible] a [illegible] b[illegible] juſtum dupliciter, vel ratione cauſæ efficien[illegible] [illegible] f[illegible]mæ. Q[illegible]oad illam, juſta atq; legitima bellandi cauſa ut [illegible]e eſt [illegible]tenim qui arm[illegible] ſuſ[illegible]ipere vult, ſedulò pen[illegible] [illegible] ſ[illegible]s [illegible] lace[illegible], nec ullo alio modo certisſi[illegible] [illegible] eximer[illegible] p[illegible], adeoq; [illegible]e utile Reip. ſit. Q[illegible]ollimat *M[illegible]* n[illegible] oratione [illegible] penes *Tacitum [illegible] 2. Hiſt.* [illegible] *Gr[illegible] de Jure [illegible] lib. 2. c. 24. §. 8* [illegible] *ſeq.* Ve[illegible] [illegible] [illegible]alce [illegible] [illegible] abſcondito [illegible]ntes [illegible] c[illegible] od[illegible] [illegible]e, & ab aliis quam rerum [illegible] [illegible] po[illegible], [illegible] ambigu[illegible] d[illegible] formâ judicat[illegible]. Et [illegible] *bellum* [illegible] [illegible] quod a ſummo [illegible] [illegible] [illegible] non [illegible] ge[illegible] [illegible] et contra[illegible] [illegible]ur, [illegible] [illegible] eſſe [illegible] [illegible] R[illegible] [illegible] *n. j. r. bel. b. 1.*

X.

Cauſa hujus peculij efficiens aut eſt remota, aut propinqua.

Illa eſt [illegible], quod militantibus ſubvenit ex Conſtitut. [illegible]. Et quidem auctoritate *D. Auguſti* ijs primum c[illegible] n[illegible], [illegible] poſtea *Optimi Trajani* Imperatoris con[illegible] approbat[illegible] & denique *D. Hadriani* ſubſcriptione ad [illegible] dim[illegible], & [illegible] extenſum fuit. *pr. J. Quibus non eſt perm. facere teſtam.* [illegible] *in §. 1. J. per quas perſon. nob. acqu.* Imperator Juſtin[illegible] acquiſitum fuiſſe parentibus [illegible] caſtrenſia peculia [illegible] gendum non de retrò la[illegible] ſeculum, ſed de [illegible] ejus ætatem. *Bachov. ad d. §.* Hoc conſiſtit aut in [illegible] ne bellica, quando ſcilicet [illegible] ſibi in militia aliquid acquiſivit. *l. 11. D. de Caſtr. pecul.* Aut in [illegible] militiam contingente. Donare autem poteſt uxor [illegible] filio. *l. 3. d. t.* ſeu cognatus cognato. *d. l. 11. b. t.* Quod [illegible] neo dicendum putat *Bachov. J. per quas perſon.* [illegible] citur quoque peculium caſtrenſe, ſi commiſſione [illegible] [illegible] miles. Sed quid ſentiendum de more [illegible] ſtris recepto, quo Duces ſeu Capetanei [illegible], qui [illegible] ſuis militârunt, hæreditatem ſibi adjudicant excluſis legitimis hæredibus? Contrà rationem quodammodo eam [illegible] legitimam doceant conſuetudinem: quam tamen [illegible] valere arbitror, niſi liberis ac parentibus ſalva ſit [illegible] *36. §. [illegible]. C. de inoff. teſtam.* vide *Treutl. Vol. 1. D[illegible]. 13. th. 11. l. D. [illegible] p. [illegible]. Conſt. [illegible] 2. def. 1. & ſeq.*

XI.

Cauſam efficientem ſequitur materialis.

XII.

Materiam Logici duplicem ſtatuunt in qua, ſeu ſubjectum, & circa quam, ſeu objectum.

XIII.

In qua ſeu Subjectum, ſunt filijfamilias in militia conſtituti.

Omnes filijfamilias, qui milites eſſe, caſtrenſia quoq; pecu[illegible]lia habere poſſunt. Mili[illegible]re autem poſſunt, qui expreſsâ lege non prohibentur. Quales ſunt latrones. *l.24. D. de captiv. & poſt-lim. reverſ.* Is qui ad hoſtem defecit & redijt, *l.3. §.10. D. de Re milit.* Item adulterij & judicij cujusdam publici damnatus, *l.4. §.7. d. t.* [illegible] ſtatus controverſiam patiuntur, licet reverà liberi ſint, per [illegible] p[illegible]s tamen militiæ nomen dare ijs interdictum, ſeu ex li[illegible] [illegible]n [illegible]itutem, ſeu contrà petantur. Nec hi, qui ingenui [illegible] de ſerviunt, militare poſſunt. *l.8. d. t.* Et enumeratis qui[illegible]d[illegible] p[illegible]c[illegible]lium non conceditur, quia militiâ indigni judicantur. [illegible]us ſimiles habentur hodiè circumforanei, vagi, pagatim g[illegible]es, Gard vnd Herrnloſe Knechte. *Schulz. Synopſ. J. de milit.* [illegible] Quamvis enim lege non prohibeantur, indignos ſe [illegible] redd[illegible]t, cùm miles nemo, quàm qui ſacramentum præ[illegible]titit, atque ſtipendia fecit, eſſe videatur. *tot. tit. C. de his qui non im-ple[illegible] [illegible]end. ſacram. ſolut. ſunt.* Similiter excludendi ſunt pueri, [illegible] meritoriæ, alijq; aſſeclæ exercitus, der Troß Huren vnd Buben / quod genus hominum à militari exercitu planè arceri j[illegible]r. Arttickels Brieff auff die Teutſchen Knechte. Maximil[illegible]a. II. [illegible] d. A[illegible]. 1570. art. 68. *Gail. 1. de P. P. c. 4.* Fœminas quoque h[illegible]s [illegible]eculij haud capaces eſſe *contra Kornmannum de jure virg.* [illegible] *Dn. D. Franciſ. Rom. diſp. de pecul. θ. 5. B.* ſentio, quia ad milit[illegible]am [illegible]oneæ. Ob inconſtantiam enim animi vix fortitudinis ca[illegible]p[illegible]c[illegible]s eſſe queunt. Et eum ab omnibus muneribus civilibus [illegible]t removendæ. *l. 2. D. de R. J.* bello ſe immiſcere ij[illegible] nefas, quod maxi[illegible]è munus civile ac publicum. Et ſi ob pudorem ſexus in judicio comparere, & pro alijs poſtulare non [illegible]citum *d. l. 2* non [illegible]eritò arma induere, & in bella abire ſexui huic incongr[illegible]m er[illegible]t. Adducunt quidem exempla illuſtrium fœminar[illegible], Amazonum & aliarum: & è recentioribus præcipuè allegatur puel[illegible]a [illegible]a ruſtica in Agro Aurelianenſi. *Johanna d' arc.* vulgò *la pucelle*

d. Orleans. Cui [illegible] ſmilijs [illegible] m[illegible] [illegible]

[illegible] Sim[illegible] [illegible]

[illegible] m igitur [illegible]

[illegible] Hoc [illegible],

[illegible] operas [illegible]

e[illegible] & [illegible] ent a ta[illegible]

[illegible] hanc [illegible] quæſiverint. Q[illegible] refert [illegible]

[illegible] tamen ab Angelis c[illegible] & ta[illegible]

[illegible] at [illegible] m [illegible] in[illegible]

[illegible] quibus hab[illegible] oratio[illegible]

habe[illegible] a nec in[illegible] teſtant. Dantur qu[illegible] qui [illegible]

[illegible], in [illegible] militia prohibentur, & ij tamen p[illegible]

tur, v.g. *Clerici*, qui milites eſſe non poſſint [illegible]

eſt [illegible] militiâ, quoniam deſinit eſſe miles ſec[illegible]

miles Chriſti. *2. Feud.* [illegible] *21.26. § quiclericus* adde *C*[illegible]

von Lehen und Wind [illegible] der Pfarherrn. Igitur [illegible] m li[illegible]

poſſint, nec ad feudi ſucceſſionem admittendi e[illegible]

ſt[illegible] tum ſervitia præſtare velint. Prius jam pro[illegible]

[illegible] evincit feudorum natura, quæ ob ſervitia [illegible]

ſolvit. Quæ cum perſonalia ſint, certæ[illegible]

induſtriam reſpiciant, per alium expediri non poſſunt. [illegible]

Synopſ. feud. cl. [illegible] *8 n.92. Fin* [illegible] *F.6 § .16. l. 1. R.B.* [illegible] *part.* [illegible]

Ma[illegible] *ſius Juridicæ Facultatis Ordinarius Dn. Jer. Re*[illegible]

ſu[illegible] *feudal.* [illegible] *6. §.* [illegible] *66.* [illegible] *68.* Licet Jure Saxonico c[illegible]

t[illegible], dum ſecundum hoc Eccleſiaſticæ perſonæ, p[illegible]

ſubſtitutum ſervitijs, ad feudi ſucceſſionem admitt[illegible]

Elect. 28. part. 3. in pr. Modò in conceſſione feudi non [illegible]

duſtria nominatim non electa; aut expreſſè [illegible]

ca[illegible] tum, perſonaliter vaſallum, ejusque hæredes laicos [illegible]

oportere. *Dn. Carpz. J. f. d. C. def. 2. & 3.* Atq; hæc quidem [illegible]

quoad ſucceſſionem feudi obtinent, manente nihilo[illegible]

perſonas peculia caſtrenſia habere poſſe, & quidem [illegible]

tanquam cœleſtis exercitus milites militi[illegible]

quoad doctrinam & animarum ſalutem proſpiciunt, & b[illegible]

ſua non aliter, quam in bello acquirunt. Nec [illegible]

[illegible]

[illegible] *[illegible]arij bellici, Commiſſ[illegible]rij, S[illegible] [illegible] ac [illegible]* [illegible]. [illegible] non [illegible] ea c vi[illegible], [illegible] at[illegible] [illegible] [illegible], [illegible]ruutur, a[illegible]r. *[illegible] b.Obſ.46.n.[illegible]*. Id quod maxime Tiberius apud *Tacitum [illegible]b. 2. [illegible] n.c.26.* confirmat, dum ad Germanicum ita perſcribit: *Se [illegible] a D. Auguſto in Germaniam m[illegible] [illegible] [illegible], quam [illegible]* [illegible]. Vertit hoc paraphraſis Freinſhemiana: quibus ſe ipſum *[illegible] [illegible]er atq; con[illegible]o* [illegible] novi[illegible], ab Auguſto in Germaniam [illegible] [illegible] plura multo quam ir [illegible] conſecutum eſſe. v. de hac Tib. [illegible]onito. *Scop[illegible]u. Amir. l. [illegible] d[illegible].6.*

XIV.

Materia circa quam ſeu Objectum, ſunt res ratione militiæ acquiſitæ.

Omnes igitur res in bello captæ, quæ occupantibus ita acquiruntur, ut dominium illarum irrevocaliter nanciſcantur *§. 17. J.d.R.D.* peculium caſtrenſe conſtituere poſſunt. Univerſæ quidem res tam mobiles quam immobiles, tàm animatæ, quam inanimatæ, ſeu religioſæ, ſeu ſanctæ (omnes enim hoſtium occupatione prophanæ fiunt *l.36.D.de Relig.& ſumt.funer.*) capientibus cedunt, ſecundum *d.§.17.* Qui tamen hanc diſtinctionem patiter, ut c[illegible] bona ſcilicet, quæ revera ita capi poſſunt, ut propria maneant, ſub hoc intellectu comprehendantur. Reliqua quidem auferuntur quoque hoſtibus, ſed poſtea reſtitui debent Imperatori & Reip. ſicut *res* omnes *immobiles* Reip. ſervantur. *l. 20.§ 1 de captiv.& poſtlim.reverſ.l.[illegible]D.d.J.F* Pro debilitando enim hoſte, & augenda potentia victoris bellum geritur. *Go.ld.ad [illegible]. § [illegible] d.J. S. Hæn.d.4. ad J.§.7. Gerl. d. c.4.q 5.* diſſ. *Dn.Gro[illegible] Co[illegible] 7. dec.3.q.2.Carpz p.4.C.35.def.8.* Cæteræ *res mobiles* tàm corporales quam incorporales ſtatim occupantibus [illegible] modo non in [illegible]â recuperatæ *Dn.Carpz.ib.def.9.* acquiruntur pleno jure *d §.17* Et quidem abſolutè & irrevocabiliter etiam D[illegible] [illegible] bel[illegible] n[illegible]n dividente *d. §.17. Dambaud.prax crim. c 82.n.20 [illegible]k [illegible] 56.n.21.L[illegible]. Ex 5.q.5.Treutl.V.2 d.10.§ 2.D.& [illegible]l.Bach.* Ita [illegible] [illegible] in alios transferri nec ab antiquis dominis abſque pretio vir d[illegible]cari

poſſent. *Dn. Carp.* [illegible] bus capti [illegible] capientium *l. 5 pr. & [illegible] A R.D.* [illegible] in bello inter Chriſtianos ſervi quoque [illegible] Quod [illegible] puto. Sicut enim fœderati Romanorum capti [illegible] non [illegible] *l. non dubito 7 D. de capt.* [illegible] lavac [illegible] *m.4.* [illegible] *q.* Sed prætito [illegible] *R.* [illegible] *Dn. Grat.* [illegible] *t.q. Dam.* [illegible] *n 7* [illegible] *per* [illegible] *alleg.* Reuters beſtallung [illegible] *t.9.* [illegible] *R.D.* [illegible] capti [illegible] tum [illegible] quæ [illegible] præmio [illegible] bus [illegible] Reuters beſtallung [illegible] mobiles hoc in paſſu numerantur & *nomina* [illegible] Unde ſi quis hoſti in bello chirographum eripuit, h[illegible] gendi debitum comprehenſum. Jura enim [illegible] tur capta ab hoſtibus Jure Gentium ſtatim acquiri. *L.* [illegible] *A.R.D. § idem ea. J. de R.D.* Chirographo autem [illegible] to, [illegible] debitum competere expreſſi juris eſt *l. 1 C. de* [illegible] *chirographum. 59. de Legat. 3. l. 3 § 1. & 2. D. de liber. leg.* A[illegible] quoq; ſe facti juri poſtliminij aut reſtitutioni non ſi locus [illegible] pactis expreſsè fuerit comprehenſum. *P. Gudelinus de* [illegible] *c 4 Bocer. de bello c 15. n. 7. Ayala de Jur & offic. bell l* [illegible]

Verum prædicta locum habent tantum in rebus [illegible] iis, in quibus jus aliquod hoſti competit. [illegible] præſidiis hoſtium reperiuntur nec [illegible] aut Ducis ſunt, occupari non poſſunt, ideoque nec præda[illegible] numerari. Et ſic quidem de rebus in bello captis [illegible] puto. Quibus annecto ſtipendia atque *ſalaria* [illegible] rum perſonarum, quæ iis æquiparantur [illegible] peculium [illegible] in locum ſtipendiorum [illegible] immobilia, [illegible] Si enim [illegible] ex rebus in caſtris acquiſitis [illegible] in peculio [illegible] ut conſtat ex *l. ſi præſtat. C. de* [illegible] *ul caſtr.* multò magis illa [illegible] in locum ſtipendiorum ſucceſſerunt, peculij jure [illegible]

Quod

Quid verò de his bonis dicendum, quæ à propinquis ſeu quoque extraneis in militiam proficiſcentibus donātur, an in mobilibus ſeu immobilibus conſiſtere debeant? Et ſolas res mobiles ad peculium caſtrenſe primò conſtituendum pertinere verius videtur, cùm in militiam eunti parum proſint immobilia, ſicut apparet ex *l. ſi [illegible]uſfam.4.C.Famil.erciſc.* Poſteà tamen res quoque immobiles accedere poſſunt militiæ intuitu. *d.l.4.*

XV.

Forma Peculij Caſtrenſis eſt, quæ ipſam eſſentiam exhibet.

Præter illud, quod peculium caſtrenſe *in juſtâ militiâ* debeat eſſe quæſitum, (ergo non quod in viis publicis urbibus aut pagis auſu temerario privato ſubditis ſurreptum. *Carpz.p.2 Conſt.35.[illegible].Frank lib.[illegible].O 56.*) neceſſariò ad ſubſtantiam ejus requiritur, ut nullum planè jus, neque proprietatis neque uſusfructus [illegible] eo competat; qui, ſi rem aliquam peculiarem filijs ſubtraxerit, furt[illegible] dicitur. *l. ſi quis.52.§.6.D.de furt.* Qua de c[illegible] [illegible] [illegible] illam quoquo modo poteſt, cùm ſit res aliena: [illegible] ſolvens rem alienam ſolvere dicitur. *l. qui re[illegible].* Nullo itaque modo rem illam pater auferre poteſt, an retineat filium in poteſtate, ſeu emancipet, quia nihil [illegible] pro præmio emancipationis accipit. *l. [illegible]um [illegible] lib.* Neque creditoribus patris ullum jus in hoc peculio competit. *pr. Inſt. quibus non eſt perm.fa[illegible].teſtam.* Et pater filij nomine actiones caſtrenſis peculij non aliter movere poteſt, niſi ſatisdatione præſtitâ, filium rem ratam habiturum. *l.18.§ ult.D.de caſtr.pecul. Rauch.part.1.q.2.n.44.* Si tamen filius minorennis adſit, peculij caſtrenſis habet adminiſtrationem. *D. Carpz. lib.5.tit.8.Reſp.84[illegible].67.* vide *Hert. Piſtor. ac cæteros ibi allegatos.*

XVI.

Finis peculii caſtrenſis eſt, ut milites remunerationem quandam pro operâ præſtita accipiant, & ad alia præſtanda incitentur.

M[illegible] benevolentiam ac ſtudium [illegible] ingratia rem eſſe, [illegible] do cognitum eſt, & [illegible] magis exe[illegible] cont[illegible], optime [illegible] *D.* [illegible] *rator*. qui in [illegible] principio Imperij inter arcana do[illegible] ravit, militem donis largitionibusque pellicere ac [illegible], *Tac.* [illegible] *Annal. c. 2. & 10.* Quippe ſciebat, quod militum [illegible] nulla [illegible] præſtita & do[illegible], *Hiſtor. in Cæſarib.* [illegible] allegante [illegible] in [illegible] *Tac. in* [illegible] *ſpira* [illegible] *Annal. libri d. c. 2.* dixerit. *Id* [illegible] *cunis cupidum* [illegible] *ac* [illegible] *cnum ſolo quæ* [illegible]. Quod [illegible] intellexit [illegible] *lon*, qui exorturus pari [illegible], omnium animos militum ſibi conciliavit. [illegible] *rum l.* [illegible]. Non autem *Galba*. ideoque [illegible] a [illegible] ſtatim cepit. Sicut id notant cumprimis in ejus vit[illegible] bus *Dr. Buchner. in Orat. de Principatu Galbæ*. itemq; & *D.* [illegible] *in diſſ. ſua ms. ad Tacit. lib.* [illegible] *Hiſtor. c. 49. diſſ.* [illegible]. Qui [illegible] Chronologi [illegible] *ms Severum* [illegible] inter alia conſilia [illegible] & hoc quoq; reliquiſſe, *ut militum benevolentiam* [illegible]. [illegible] probè conſideratis anteà laudatus *Imperator Auguſtus* hoc [illegible] [illegible] de caſtrenſi peculio militibus conceſſit, quod [illegible] [illegible] confirmatum aliquoties [illegible].

XVII.

Effectus peculij caſtrenſis eſt jus, quod filiofamilias in bona caſtrenſia competit.

Quamvis ratione hujus peculij pro parte [illegible] [illegible] tamen [illegible] non eſt, ſed manet in poteſtate [illegible] Unde & filiusfamilias miles matrimonium [illegible]

[illegible]

ſum patris impetrare neceſſe habet. *l. filiusfamilias. 25. D. de Rit. nupt.* Et *Ulpianus* graviter monet etiam militi ob pietatis rationem in parentes conſtare debere, pronunciantes, eum indignum militiâ, qui parentes contempſit. *l. 1. §. 3. D. de Obseq. parent. & patron. præſtand. Schneidw. ad tit. Inſt. Quib. mod. jus patr. poteſt. ſolvit. §. 3. n. 5. ibid. Bachov.* Hiſce tamen non obſtantibus, jura illi tantum tribuunt, (*reſpectu ſcilicet caſtrenſis peculij*) quantum patrifamilias. *l. 2. D. ad S. C. to Maced.* Pleno itaque jure peculium hoc ad filiumfamilias pertinet. *l. errat. 3. C. de Caſtr. pecul. Donell. lib. 9. comm. c. 5.* Illudque ſuo nomine poſſidet. *l. libertus 17. § 2. D. ad Municip.* Tametſi aliàs in alienâ poteſtate exiſtentes poſſidere non poſſint. *l. 49. D. de Acquir. vel amitt. poſſ.* Et proinde facultatem uſucapiendi habet. *l. 4. §. 1. D. de Uſurpat. & Uſucap.* Non ſolum autem ipſe res legitimo modo acquirit, ſed & per ſervum peculij caſtrenſis hoc rectè facit, *l. pater militis. 15. §. 3. D. de Caſtr. pecul.* Porrò efficit hoc peculium, ut alienare pro lubitu illud poſſit filiusfamilias tam per donationem inter vivos, quàm mortis cauſa. *l. filiusfam. 7. § ult. de Donat.* Et quidem ſine patris conſenſu. *Berl. part. 3. Conc. n. 22.* Item feudum conſtituere. *Schultz. Syn. F. c. 4. n. 44.* Verum non tantum modis ſingularibus alienare res ſuas poteſt, ſed & per modum univerſitatis, cùm habeat teſtamenti factionem activam, quæ aliàs alieno juri ſubjectis non competit. *pr. J. Quibus non eſt perm. fac. teſtam. l. filiusfam. 14. D. de Caſtr. pecul. l. qui teſtamento. 20. §. 2. D. Qui teſtam. facere poſſunt.* In tantum quidem, ut teſtamentum de caſtrenſi peculio factum, querelæ inofficioſi teſtamenti non ſubjaceat tàm de jure Cod. quam Novell. *Weſenb. parat. de inoff. teſtam. n. 9. Treutl. V. 1. diſp. 13. th. 3. Fachin. lib. 6. controv. c. 74. Arum. Exerc. Inſt. 10. th. 13. Hahn. diſp. Inſt. 9. th. 5.* A principio verò ſaltem eos tangebat hoc privilegium, qui ipſo actu militabant; poſteà verò ad militiâ dimiſſos, veteranos, & eos, qui ob valetudinem, ſeu aliam cauſam deſinunt eſſe milites, extenſum fuit, ita tamen, ut jure communi teſtamentum facerent. *Bachov. ad pr. Inſt. quib. non eſt perm. fac. teſtam.* In caſtris autem conſtituti ſecundum morem militarem teſtantur, nec ulla ſolennia requiruntur, modò conſtet de militis voluntate, quæ quoquo modo ſeu in ſcriptura, ſeu ſine eâ inveniatur, valet teſtamentum ex vo-

luntate

ſuncate ejus *pr. Inſt. de mil. teſtam. l. [illegible] D. eod.* Et [illegible]
quicquam aliud ad [illegible] teſtamenti [illegible]
quiritur. *d. pr. mil. teſtam l. in fra[illegible] § [illegible]*
Gerbard. Exercit. Inſt. [illegible] q. 6. Dn. [illegible] 1. 8. [illegible] [illegible]
conſtet de militis voluntate, Jure [illegible]
dem prœlio & conflictu ſola [illegible] ſufficit, ut cæteri [illegible]
gentes ad minimum duos teſtes adhibere [illegible]
Imperii von Notarien de anno 1512. Colon. publ. [illegible]
menten [illegible] vnd ſollen die Notarien [illegible]
part. [illegible] Conſt. 4 [illegible] 26. Quæ [illegible]
e.g. hybernis [illegible] de [illegible]
militari gau[illegible], ſed ne[illegible]
nentur. [illegible]
imperitiam hoc privilegium [illegible]
imperatoria illorum cauſa occupati [illegible] &
illi [illegible] tenentur jure communi [illegible]
doduc[illegible] *Bar[illegible] ad [illegible], Inſt. de mil. teſtam.* [illegible]
[illegible] quid [illegible] quantum [illegible]
diendum videtur. [illegible]
[illegible] Aut enim in hoſtium incurſi[illegible] obn[illegible]
[illegible] excubant. Et pro [illegible]
[illegible] expeditisſimi operam, armis jugiter & [illegible]
[illegible] in fin. C. [illegible] procur. Zoan. [illegible] de R[illegible] Imp. n. 5[illegible]. & [illegible]
locis plene tutis, ſeu tempore pacis [illegible]
loco reperiuntur. Priori modo eodem privilegio [illegible]
abſurdum erit, cum eadem militer ra[illegible], periculo[illegible]
tunc temporis adeſt. Secus verò poſteriori caſu, qu[illegible]
cet ab hoſtium metu liberi caſtellis ſeu munitionibus [illegible]
ob ceſſationem videlicet rationis. *Fin[illegible]. Obſerv 46 [illegible] C[illegible]*
part. [illegible] Conſt 4 [illegible] f. 28. Schn[illegible] ſinopſ. [illegible] de mil. [illegible] l. 4. [illegible]
T[illegible] l. 2. Diſp 10. [illegible] 6 [illegible]. C. Harpr. ad pr. [illegible] de [illegible] [illegible]
[illegible] Equites aurati aurei velleris, [illegible] D. [illegible]
li &c. Ceſſante enim cauſa privilegii, exulet ſimul p[illegible]
[illegible] Bro. [illegible] de leg. 2. S[illegible] brower in d. l. n. [illegible]. P[illegible]
[illegible] in obligati[illegible]
[illegible] ſingulare quid habent. Obliga[illegible]

yunt,

[illegible] & [illegible] poſſe certum eſt, q[illegible] [illegible] aliter tamen ſ[illegible] [illegible] *Pater* [illegible] *de Caſtr. pecul.* ubi dicitur [illegible] *ex* [illegible] *peculij caſtrenſis* [illegible] *um ex* [illegible] *a non* [illegible] [illegible]a ut contra [illegible] a judice im[illegible] con- [illegible] *b. part.* [illegible] *n. 8.* Quæ tamen [illegible] [illegible] ex mutui [illegible] Sti Mac[illegible] pe- [illegible] ſt ad omnem [illegible] iam, & v[illegible], ut dicitur, *irritamentum m*[illegible]*o-* [illegible] v[illegible]a [illegible] *is autem.* [illegible] *Sti Ma-* [illegible] hoc S[illegible], ſi filius peculium c[illegible] p[illegible]: [illegible] ſcilicet u[illegible] ad quantitatem peculij, c[illegible] fam[illegible] vice patrum fam. fingantur *l.* [illegible] *&* 6 *D. Carpzov lib. 2. tit. 10. Reſp. 105. n.* [illegible] In [illegible] [illegible] præſumitur capere & expendere m[illegible]um in ca- ſu[illegible], *l.* [illegible] *ult. C. ad* [illegible] *Mac*[illegible]*d.* Cæte[illegible]m obligari & c[illegible] poteſt filiusfamilias quoad peculium caſtrenſe, & in t[illegible] quidem, ut nec [c]reditoribus caſtrenſibus de hoc peculio t[illegible]r reſpondere. *l. 7. D. de caſtr. pecul.* ſed in ſubſidium ſolum- modo, deficientibus alijs rebus. *l. 4. C. de Ex*[illegible]*ut. rei judicat.* Habet [illegible]en privilegium competentiæ *d. l.* [illegible] quod privilegium [illegible] jure Saxon. quoque locum habet. *Dn. Carpzov part. 1. C*[illegible]*. 32. def.* [illegible]. I[illegible]pi & incarcerari quoque non p[illegible] ex ca[illegible] æris alieni, *arg. l. 6. & l. 14. ff. de re jud. Manzius in patrocin. d. pauperat. dec. 1. q. 7. n.* [illegible]*. Berl. p.* [illegible] *concl. 28. n. 26. Sbneidw.* [illegible] *de mu*[illegible]*t.* [illegible]*m.* etiam in [illegible]ro Saxon. co non obſtante *Conſt. Ele*[illegible]*or.* [illegible] *p. 2. arg. l.* [illegible] *C. de inoff. teſtam. l. 27. C. de teſtam. l. 32. §. ult. C. de appellat.* niſi con[illegible] uſ[illegible] r[illegible]p[illegible]m de quo teſtatur *Weſ. ad Schn. d.* [illegible] D[illegible] pecu- lium caſtrenſe, quod [illegible] *a collatione* [illegible] [illegible]s, quæ licet regulariter neceſſaria eſt in ſucceſſione de[illegible] [illegible], quia omnes liberi, ſine ulla emancipationis a[illegible] diſtinctione, ſibi invicem conferunt *We*[illegible]*ib. part.* [illegible] *de c*[illegible] *n. 5.* attamen hæc collatio locum non habet in peculio c[illegible],

quod

quod pleno [illegible] quod [illegible] habet [illegible] peculiiori [illegible] [illegible] excipiuntur bona caſtrenſia [illegible] *Bocer. de bell.* [illegible] *n. 17.* Quod idem de [illegible] [illegible] dit *Dn. Carpz part. 3. const. 11. def. 9 n. 2. &* [illegible] *quas per* [illegible] *q. lit. C.* Res tamen expedit [illegible] das [illegible] [illegible] quae a patre habet, in [illegible] *Carpz* [illegible] *q.* [illegible] *n. 28.* [illegible] [illegible] in ſucceſſione [illegible] militia [illegible] [illegible] as diſponendi [illegible] [illegible] ſi tamen [illegible] moritur nullis [illegible] [illegible] illius caſtrenſia deſinunt eſſe talia, & [illegible] [illegible] pertinent jure communi. *pr. Inſt.* [illegible] jure Pec. [illegible] *l. 2. & 9. D. de caſtr. pecul.* Quod [illegible] [illegible] *2. immutatum.* eſſe ſtatuunt *Gloſſa & Dd.* quam [illegible] rum quoniam nullo alio quam *hujus cap.* argum [illegible] [illegible] rant, ibidem autem nullum verbum de caſtrenſi pec [illegible] [illegible] ſed generalis ſucceſſionis [illegible] [illegible] [illegible] [illegible] ad [illegible] ſemper [illegible] omm [illegible] le & privilegium derogetur. Et quod non exp [illegible] quare ſtare prohibetur [illegible] *C. de* [illegible] *in fin. C. de appellat. Enenk. de privileg. par. &* [illegible] *pr.* [illegible] *man. Conſ.* [illegible] *p. 67*

XVIII.

Quaſi caſtrenſe peculium eſt, quod filiofamilias ex militiâ togata, ſeu intuitu illius obvenit.

Differentiæ ſpecificæ cauſa eſt *militia togata* [illegible] dem in pertractatione [illegible] [illegible] [illegible] nentibus publicis [illegible], & non tantum de [illegible] qui ſtipendiis publico aluntur, ſed de [illegible] publicis tal. beneficijs præſunt. *l.* [illegible] *C. de* [illegible] Non [illegible] [illegible] eſt hoc privilegium de mechanicis publicis [illegible]

[illegible] fuerit, [illegible] qui in dignitatibus & adminiſtratio[illegible] publicis [illegible] poſiti [illegible] apparet *ex d.l.ult.C.de inoff.teſtam.* [illegible] *Bachov.* [illegible] *Per quas perſonas nobis acqu.pr.n.6. Enenk. d.l. priv. 10.n.36.*

XIX.

Cauſa efficiens hujus peculij eſt vel remota, vel Propinqua.

[illegible] eſt privilegium, quod con[illegible] Imperat. militibus in togata militia agentibus ad exemplum armatæ ex ſingulari gratia [illegible] fuit. *Em.Mendez.de caſtro in qu.caſtr.pec.n.161.* ita, ut ea [illegible] ex [illegible] capiunt, proprio jure poſſideant. *d.l.ult.* Hæc [illegible] liberalitate publica ſeu privatâ ratione togatæ militiæ, quæ conſtat adminiſtratione & functione officiorum publicorum. Qui autem ea obire cupiunt, bonis liberalibusq; artibus debent eſſe inſtructi. Per artes autem liberales intelliguntur eæ, quæ tradunt diſciplinas ac præcepta ad exitum aliquem [illegible] bonum in hac vita ducentia. Faceſſant igitur artes [illegible] malæ ac prohibitæ, quarum mentio fit partim *l. 1.D.de his qui not.infam.* ubi infamia Sectatores earum notantur. vid. *Weſ. p[illegible] ibid.n.5.Tr.V.1.Diſp.9.θ.5.lit.E.* partim *tt. C.de Mathemat.& Malef.*

XX.

Materia in qua ſeu ſubjectum, ſunt perſonæ hujus peculij capaces.

Primum exemplum peculij quaſi caſtrenſis eſt in Clerico, qui plenum jus diſponendi habet de bonis ſibi quæſitis [illegible] *ſacroſanct. 3[illegible] Epiſcop.& Cler.* Cum enim *Clericus* miles cœleſtis dicatur, merito quoque privilegio togatæ militiæ gaudet, ſicut miles ſecularis armatæ. *Mendez.in qu.caſtr.pec n.161.* Intelliguntur autem per clericos, Epiſcopi, Presbyteri, Diaconi, Subdiaconi, [illegible], Lectores, ac ſimiles, officijs divinis deſtinati. *d.l.[illegible].pr.& l.49. [illegible]th.presbyteros.C.de Epiſcop.& cler.* Vid. *Enenk.priv.10.n.3.* [illegible]

 ſcopi

[illegible] Quod enim [illegible] quæritur, eſt [illegible] negotiationi [illegible] quia procuratorum officium [illegible] *§ fin. In[illegible] pt.* [illegible] *Tr. Vol. 1. diſp.* [illegible] *D.* [illegible] hoc in Procuratoribus Cameræ Imperialis [illegible] non [illegible], ſed honorabile, tam ratione perſo[illegible] [illegible] *Obſ. 4. n. 6.* Præter enumeratos & Præ[illegible] [illegible] Paſtiori, Archiatri, [illegible] quibus Doctores [illegible] que & [illegible] Licentiatus enim [illegible] dem [illegible] qui in [illegible] ſunt [illegible] quod de Doctoribus [illegible] Magiſtris [illegible] Doctores atque Magiſtri [illegible] [illegible] publica [illegible] *n. 16.* [illegible] fœmina [illegible] ex [illegible] *186.*

XXI.

Materia circa quam ſeu Objectum, ſunt res, quæ in hoc peculium veniunt.

[illegible] vero [illegible] modo [illegible] ex [illegible] [illegible] & [illegible] [illegible] Veſte & [illegible] Doctori [illegible] patet ex-

 preſſè

preſſè contrarium declaraverit. [illegible] omnia quæ [illegible] ſumtus ſtudiorum [illegible] non tenetur. [illegible] *Harm. P.* [illegible] tionis [illegible] de [illegible]

XXII.

Formam peculij quaſi Caſtrenſis ipſa ſubſtantia tradit.

Requiritur autem, uti ex præ[illegible] quaſi caſtrenſis conſtitutionem, [illegible] militia [illegible]. [illegible] ſunt comparata. *Enenk. d.* [illegible] fit à patre [illegible] planè ſeparatum [illegible] C[illegible] ex ſingulari patriæ poteſtati privilegio [illegible] ſtans per *l. quinquen.* [illegible] communi ne [illegible], ut perſonæ [illegible], atque [illegible] *de Epiſcop. & Cler.* [illegible] *de advocat.* [illegible]. [illegible] ut perſonæ [illegible] *per procuratorem* [illegible] *de* [illegible] *omn.* [illegible] atque [illegible] *Enenk. d.* [illegible] 48

XXIII.

Finis eſt, ut remuneretur ſtudium ac opera ijs, qui Remp. tuentur.

[illegible] ſolum [illegible] [illegible] majeſtatem [illegible] *Imperat.* [illegible]

Zach. [illegible] de exempt. Imp. [illegible] Cam. bor. ſubſ. cent. [illegible] Reink[illegible] de [illegible] l. 2. cl. 2. c. [illegible] & [illegible] Quo nihil aliud ſignificare v[illegible], quam Remp. ro[illegible], incrementum ac decrementum conſiſtere [illegible] [illegible]ſtratione, ad quam ſi bonis artibus imbuti ac multarum [illegible] experientiâ clari admoveantur, omnia proſperè ſuccede[illegible], optimum quemque ſtatum perturbari. Reip. enim a[illegible] ſtratio [illegible] ac præcipue Jurisperitis committenda. *D. [illegible] Coll. g. Inſt. diſp. [illegible] proœm. Ax. 15.* Quapropter ſapientes [illegible] non minus [illegible] ſe [illegible] ad Remp. con[illegible] dam aliquid præſtit[illegible] qui [illegible] bonum [illegible] eam liberatum. [illegible] pecul[illegible] materia ubi eadem [illegible] quam armatæ militiæ. *§ [illegible]* [illegible] enim [illegible] privilegium, [illegible] præter [illegible] clares pell[illegible] Reip. [illegible]. Sed [illegible] Ordo militiam [illegible] dic[illegible] um [illegible] *[illegible]tur D. [illegible] Inſt. [illegible] th. 4. [illegible] 45.*

XXIV.

Efficacius peculij quaſi caſtrenſis eſt jus, quod militibus togatis competit.

C[illegible] exemplum caſtrenſis peculij, quaſi caſtrenſe [illegible] [illegible] gaudent [illegible] [illegible]. Habentur igitur [illegible] pro [illegible] & alienare [illegible] pa[illegible] entibus. *G[illegible] Inſt. [illegible] m[illegible]* [illegible]. *An[illegible] in C. [illegible] § 1. [illegible] p[illegible] a. [illegible] 3. B[illegible] 2.* Interim tamen patria poteſtate non ſemper [illegible] qui officijs publicis [illegible] expreſſè [illegible] e[illegible] in patric[illegible] d[illegible] condit[illegible]. *§. 4. Inſt. Quib. mod. I. P. S.* Intelliguntur autem hoc in loco non illi, *Patr[illegible]*, qui à Senatoribus Rom. ac Patribus olim à Romulo conſcripti

l.ult.Inſt.de teſtam.milit.Arum.Exerc.7.§ 6. Ludw.diſp.1.7 §.9.A. Et [illegible] quidem [illegible], qui peculia quaſi caſtrenſia poſſident, [illegible] privilegiis fruantur, ut patet ex *l.ult.C.de inoff.teſtam. Schneidw.ad d. §.ult.* Cæterum æquiparantur ijs in ſucceſſione, [illegible] obligatione & alijs; ut competentiæ, & quod non [illegible] debitum civile carcerari. *Manz.dict.tractat.q.7.n.34.* [illegible] *d.17.§.6.B.*

XXV.

Hactenus peculium militare perſultavi, aggredior nunc paganum.

XXVI.

Quod dividitur in Profectitium, & Adventitium.

XXVII.

Illud vel Servorum, vel Filiorumfamilias.

XXVIII.

Servorum peculium eſt, quod ſervus à rationibus dominicis conceſſione domini habet ſeparatum.

Cum ſervus omnia, quæ acquirit, domino acquirat, nihil [illegible] proprium habet, ſed labore ac opera ſua res dominicas auget. Neceſſario autem *conceſſio domini* requiritur, quare hanc conceſſionem loco differentiæ ſpecificæ poſuo. Non enim id peculium eſt, cujus ſervus ſeorſim à Domino rationem habeat ſed quod Dominus ipſe ſeparavit, ſuam [illegible] diſcernens. *l.4.D.de pecul. Meier Coll.Argent.* [illegible] *jur. 29.c.14.n.12.*

XXIX.

Cauſa efficiens eſt ſeu remota, ſeu propinqua.

Illam conſtituit ipſe dominus *l. 4. pr. l. 7. §. 3. D. de* [illegible] *quæ in fraudem cred. t.* ſeu domina. *l. 3. § 2. d. t.* [illegible] us ſervi peculium concedere poſſunt. *l. 1. §. ult.* [illegible] Et dom[illegible]hus nudæ proprietatis. *l. 2. l. 19. §. 1. verſ. qui* [illegible] non [illegible] in ſervo dotali, ut & uxor. *l. 19.* [illegible] *ſ. ſor. d. l. §. ult. all. t. t.* & [illegible] quos vide [illegible]. Hunc permalit ſervi induſtria ſeu frugalitas. C[illegible] enim ſæpiſſime, ut ſervi eſſent egregij artifices, ut [illegible] fici & alij. Quicquid igitur hiſce artibus lucrabantur [illegible] peculio accedebat. Non ſolum autem per artificia, [illegible] per frugalitatem augebant illud, ſicuti dicitur *apud* [illegible] Phorm. *Quod ille de demenſo comparſit meo* &c. Q[illegible] tius intelligi [illegible] um putat *B. hov.* [illegible], quod cla[illegible] domino non concedente *in pr. J. per quas perſonas nobis* [illegible] *Taubm. ad Plaut. Stich. act. 1. ſc. 2. verſ. 3.* & *Laurent.* [illegible] *ſervis p. 24.*

XXX.

Materia in qua ſunt ſervi hujus peculij ſolum capaces.

Servorum nullam differentiam eſſe dicit [illegible] *J. de Jure perſonar.* quoad [illegible] licet, quoad [illegible] diſtinguuntur [illegible] quidem [illegible] ſervi, ſed [illegible] ministeriis, quæ in [illegible] diſtinctione fuere. *arg.* [illegible] *Injur. & in l.* [illegible] *de fi.* [illegible] *D. de* [illegible]. [illegible] ſervorum [illegible] ſervi [illegible] negotia dominorum curabant, [illegible] A[illegible] Atticenſis vide *Taubm.* [illegible] *A* [illegible] Vocabantur quoque *ordinarij*, qui [illegible] peculio [illegible], quos ipſi imprabant, eorumque quaſi [illegible]

l. [illegible] rum.17. in fin. D. de Pecul. Don. Ennucl. lib.9.c.6.B. Sed quia vicarius [illegible] ordinario revertebatur, qui non minus quam ille verus servus, & diverſitas hæc ex ſolo nutu domini pendebat; nullum ſervorum differentiam agnoſco *cum Bachov. ad § ult. de Jure p[illegible]n.* Appellabantur autem ratione officiorum variè, alij aquarij, [illegible] ppe lecticarij, Hoſtiarij, Paparijque. *Schneidew. ad Inſt. d.l. & M[illegible]ing. ib.* Et prolixè de varijs eorum apud veteres miniſteriis [illegible] dictus *P[illegible]gnorius all. tract.* Et de ætate ſervorum publicorum *B[illegible] gricola tr. de ætat. ineunt. offic. cap. 45.* Statuliberi verò an ſint ſervi [illegible]? Et puto eos eſſe *l.6. l.9. & l.29. D. de ſtatulib. Treutl. [illegible] 2.§.1. C. Riem. dec.1. quæſt.10.* Ad [illegible]ios, verò nō quia certo [illegible]m loco erant adſcripti, ſimiles tamen ſervis eſſe non nego; [illegible] & colonos & homines proprios, quos in Polonia *Kmethones* [illegible]ari *ait Treul. d.l.E.* Uti & *monachi* æquiparantur ſervis, [illegible] quia nihil habent proprij, tum quia Abbati ſubjecti ſunt. *Schneidew. alleg. loco.*

XXXI.

Materia circa quam ſeu Objectum, ſunt res huic peculio obnoxiæ.

Quod omnes res mobiles quàm ſoli, corporeæ ac incorporeæ in peculio eſſe poſſint, ſupra dictum fuit. In peculium igitur ſervorum pariter hæ res omnes cadunt, [illegible] ſcilicet à rationibus dominicis ſint ſeparatæ. *l.4. D de Pecul.* uti ſunt vicarij. *l.7 §.4. l.17 pr. D. dic.* Et per conſequens vicarij vicari[illegible] *l.7.§.3. d.t.* Ancillæ, *l.57.§.2. eod.* cum partu, *l.6[illegible] §.[illegible] de Rei vind.* Pecora & equæ cum fœtu. *d.l 57.§ 2.* Veſtimentum ita neceſſarium, ut ſit uſus quotidiani, perpetui tamen ſit uſus, & [illegible] cuſtodiri a ſervo poſſit *l.25. l.40. §.1. D. de pecul.* Pecunia numerata. *l. ult. pr. D. de donat.* vel mutuò ſumta. *§.4. J. qu[illegible] qui in aliena pot. ſt.* Quod ſervus ex pacto libertatis apud ſe depoſitum habet, ut domino tradat. *l.8.§.5. de Pecul. leg.* Res & pecunia dotalis *l. [illegible] D. ſol. mat.* Et hæ quidem mobiles fuere res [illegible] & immobiles in hoc peculio, uti ſunt ædes peculiares *l. [illegible] & [illegible] D. de pecul. l.6. pr. de pecul. legat.* cum fructibus. *l. ult. D. quando de pecul.*

[illegible] & incorporalibus, [illegible] d [illegible] d [illegible] vide [illegible]

XXXII.

Forma hujus peculij conſiſtit in ſequentibus.

1. Neceſſario requiritur [illegible] monio domini, & [illegible] ſervi enim [illegible] poſſunt, quia ipſi ſunt in commercio, [illegible] rantur. [illegible] quibus ex [illegible]
2. [illegible] ſervo vendito nunquam [illegible] tum, ſive [illegible] excepit, ſive non, [illegible] peculiaris ad emtorem [illegible] ſervi & [illegible] ad exhibendum [illegible] actione [illegible], & [illegible] vend[illegible] modo [illegible] acce[illegible] [illegible] peculij [illegible] in peculio [illegible]

XXXIII.

Finis eſt negotiatio ſervi.

Acquiri non ſolum per [illegible] [illegible]

[illegible]

[illegible] *ab. n.3. & [illegible] acq. vel amitt. poſſ. n.7.* præſertim quoad effectum, quod per poſſeſſionem uſucapimus [illegible]. Diſtinguendum verò e[illegible] circa poſſeſſionem, aut ſervus in causâ peculiari adeptus poſſeſſionem, aut non. Priori caſu non neceſſaria eſt [illegible] [illegible] tenendi, q[illegible] [illegible] [illegible] *D.* [illegible] [illegible] *d.* [illegible] [illegible] debet juſſu atque ſcientia domini, quia ratio d. [illegible] tunc ceſſat, quod confirmatur à *Bach. ad Inſt. all. t. s.*

XXXIV.

Effectus eſt jus ex hoc peculio emergens.

Cùm ſervus jure civili pro nullo habeatur. *l. 32. D.d. R. I. [illegible] D. [illegible] qui eum qui in jus voc. eximat* [illegible] [illegible] ere d[illegible]. *[illegible] d. [illegible] min.* [illegible] quoque plane eſt exp[illegible]. Quicquid [illegible] ac [illegible], domino cedit, prout ſæpius eſt memoratum & in [illegible] abſque [illegible] domini præcedente. Quod tamen [illegible] in hæreditatis aditione, ſervus enim hæres in[illegible] [illegible] ſine [illegible] & juſſu domini nihil agit, cum hæc [illegible] [illegible] legimus, qui per [illegible] expediri nequit. *l. 7. D.d. R. I. Bach. v. ad §. 4. I. per quas perſonas cuiq. acqu.* In reliquis autem negotiationibus ratione hujus peculii Dominus conveniri poteſt. *Giphan. comm. ad Inſt. d. l.* Quapropter [illegible] peculio Prætor introduxit, natas ſcil. [illegible] [illegible] [illegible] civili nulla diceretur, Ex facto enim & contractu [illegible] [illegible] obligatur, adeo ut [illegible] [illegible] perſonæ eis intelligantur *l. [illegible] ante fin. C. [illegible]* [illegible] tamen potest ex ſuo contractu [illegible] *C. [illegible] pro par[illegible]* [illegible] [illegible] ſolidum, ſed [illegible] [illegible] [illegible] innuit [illegible] *A[illegible]* [illegible] [illegible] [illegible] [illegible] ſervum. Lic[illegible] [illegible] Domini [illegible] [illegible] non eſt [illegible] certa a[illegible] [illegible] concedit peculium. [illegible]

 pro-

profectitio, quod dominus ſervo ſuo [illegible] paulò poſt in ſequentibus. Cæterum [illegible] cum ſervo habente peculium, etiam [illegible] cum ſervo contraxerit. *l. ſi quis ſervum* [illegible] habet contra Dominum pec[illegible] nihil[illegible] obligatione, quæ cum ſervo [illegible] hoc effe[illegible], ut ſi a[illegible] ſit cum d[illegible] neat [illegible], & ſic qu[illegible] non poſſi[illegible] *l. 14. D. d. O. & A.* [illegible] Sicut autem contrahenti cum [illegible] a ſi[illegible]o, ita quoque contrahenti cum Monacho [illegible] Omnia [illegible] ſequentia [illegible] in [illegible], quæ p[illegible] ijs aptari vide *Zaſ.* [illegible] *Eberhard. in Top.* [illegible] *n. 9.*

XXXV.

Peculium filiorumfamilias profe[illegible] eſt, quod ex re ſeu ſubſtantia patris filius-familias quæſivit.

V[illegible] *pr[illegible]um*, q[illegible] patre [illegible] h[illegible] Imperator *in* [illegible] *prium* [illegible] *in l. pr[illegible]* [illegible] *pr[illegible]* illa, quæ p[illegible], [illegible] [illegible] *Treut.* [illegible] fi[illegible] eſt in ve[illegible] *patris.* [illegible] vel ſubſtantia patris, id eſt, propter rem [illegible] bus vel [illegible] qu[illegible] accipiuntur verba ex incendio [illegible] *D* [illegible] *fr[illegible]* tam pro loco incendii, [illegible] propter tumultum vel [illegible] *d. l.* [illegible] [illegible] vocabulo *ex re* [illegible] tra[illegible] [illegible], ut omnes res tam corporales [illegible] [illegible] comprehendat, & [illegible] [illegible] ut *l.* [illegible] *D. d. V. S.* Duplicem [illegible]

tem *res* habet, aut jus ſeu cauſam, ob quam aliquid alicujus eſt, vel eſſe debet, aut juris objectum, de quo quæritur, indicat. *Godd. in l.8.& 23.de V.S.* Subſtantiæ vox idem valet, quod rei, quoniam quod uno loco ſubſtantia, altero res vocatur. *Enenk.d.l.*

XXXVI.

Cauſa efficiens iterum vel remota, vel propinqua.

Remota eſt pater, qui conceſſione ſuâ hoc peculium efficit. *Mier.C. leg.Arg. lib.15.tit.1.§.5.* Summa verò poteſtas juré civili parentibus conceſſa fuit in liberos, uti conſtat *ex tit.de patr.poteſt.* ubi dicitur; *Nullos homines eſſe, qui talem in liberos habeant poteſtatem, qualem cives Romani.* Et eadem fermè poteſtas competebat olim parentibus in liberos, quæ dominis in ſervos, cum haberent jus vitæ & necis in illos. *l.11.D.de lib & poſthum.l.fin.C. de patr. poteſtat.* Licet autem hæc poteſtas quibusdam in locis coarctata fuerit *ut l.inauditum.2.D.ad L.Corn.de Sicar.* & acerbius puniantur ij, qui filios occiderunt. *l.un C.de his qui parent. vel lib.occid.* Attamen pluribus in partibus intacta manſit, ita ut pater filium poſſit exhæredare, ex certis tamen hodie cauſis, quæ omnes enumeratæ *in Nov.115.Arum.Exert.10.§.3.Forſter.lib.7.diſp.12.§.28. Harpr. §.fin.I.de Exhær.lib.n.65.* Et caſtigare ac corrigere. *l.unic. C.de emendat.prop inq.* ita ut etiam illum privatim incarcerare non prohibeatur, *Schneid. ad tit. Inſt.de patr.poteſt.n.28.* licet alias privatos carceres citra læſionem majeſtatis nemo habeat *Dn.Carpz.Prax. Crim p.3 q.CXI.n.78.79.80.81.* Multi itaque patriæ poteſtatis effectus adhuc reperiuntur, inter quos haud poſtremum locum ſibi vendicat jus, quod parentes in bonis à ſemetipſis profectis habent, quæ vocantur peculium profectitium. vide *Schn.d.t.circa fin.* Propinqua eſt ipſa induſtria ſeu acquiſitio filijfamilias. Quoties enim filiusfamilias in hoc peculio aliquid acquirit ſtatim patri acquirit *§.1.Inſt.per quas perſ. nob. acqu.* Rationem autem, cur bona profectitia in totum patri acquirantur, *Juſtin.* ibidem ipſe aſſignat, quod æquum ſit, ut ad patré revertatur, quod ex ejus bonis profectum eſt. *Harpr. ad d.t.& §.n.4* nec momento conſiſtit in ejus perſona. *l.79.D.de acqu.vel omitt.hæredit.Harpr. ad §.item vobis. n.4.d.t.*

h.4.d.s. Ex veſtigio [illegible] pater poſſidet, quamvis [illegible] poteſtate filium eſſe. *l.4. D.* [illegible] neque [illegible], neque ad patrem [illegible] peculiaris videtur. [illegible] *D.de R* [illegible]

XXXVII.

Materia in qua ſeu ſubjectum eſt filiusfamilias.

Neceſſ[illegible] autem requiritur filium poteſtati [illegible] xium eſſe. Soli enim filii [illegible] habent peculium [illegible] familias. [illegible] filiusfamilias [illegible] in hoc peculio [illegible] re, [illegible] patrem voluntatem ſuam [illegible] ſicut tutor [illegible] tur. *l.poſt* [illegible] *D.* [illegible] ditur patri [illegible] *col.pri.D.24*

XXXVIII.

Materia circa quam ſeu Objectum, ſunt res quæ in hoc peculium cedunt.

Res [illegible] mobiles [illegible] immobiles corporales [illegible] quæ à patre [illegible] [illegible]

[illegible]

[illegible] *Azo in Summa Cod. de bon. quæ lib.* lucrum omne profectitium est patri, quia cum [illegible] ne [illegible] patris accedit. Si enim [illegible] à patre non accepiſſet, ceſſet quoq; lucrum. *gloſſ. in l. cum oportet. 6. C. de bon. quæ lib:* Eſt enim ex re & [illegible] patris, nec [illegible] quod ſi cuidam [illegible] hodiernis [illegible] uſuræ ſint prohibitæ; & ſi ex maleficio [illegible] acquiſitæ. Licet enim ex maleficio quæſitum pater reſtituere teneatur, exindè tamen nō ſequitur, quod neque [illegible] petere à filio, cum [illegible] unquam, ut [illegible] reſtituatur [illegible] 60. §. [illegible] *D. Loc.* [illegible]. Acquiritur ergo patri [illegible] cum [illegible], hoc eſt, ut teneatur ad reſtitutionem. *vide Eisenk.* [illegible] *n. 6.* ubi allegat pro hac ſententia *Bald. in l. cum oportet. 6. C. de bon. quæ liber & in l.* [illegible] *§. 1. D. de his qui ſui vel alieni juris.*

XXXIX.

Forma hujus peculij eſſentiam conſtituit.

Neceſſarium requiſitum peculij profectitij eſt, ut ſit profectum ex re ac bonis patris, prout ſuprà dictum & patrimonio ejus inhæreat. *Meier Colleg. Argent: lib: 15. tit. 1. th. 9.* ita ut proprietas & uſusfructus patris ſit. *§. 1. Inſt. per quas perſon. cuiq; acqu:* Adeò ut in confiſcationem bonorum filij delinquentis non veniat; Cùm pleno jure ad patrem pertineat. *l. 10. §. 6. Dd. vulg: & pup: ſubſt: Sixtin de Regal. l. 2. c. 12. n 73.* Etiamſi pater filio conceſſerit liberam & abſolutam adminiſtrationem peculij profectitij: Cum per hujusmodi conceſſionem non cenſeatur translata facultas per delictum vel aliâ ratione alienandi & efficiendi ut alius acquirat. *Gomez var: reſol tom. 2. c. 5. n. 16* At ſi pater committat delictum, ex quo bona ejus veniunt confiſcanda, propter ſpem ſuccedendi, & propter illam præventionem quam fecit pater tradendo ei peculium. *l. 3. § ſed utrum* [illegible] *D. de minor. Sixtin. ib. n. 77.* Niſi in crimine læſæ majeſtatis. [illegible] *gas. tit. de pœn. comm. crim. læſæ majeſt. q. 13. n. 4.* Quod tamen ad filium crimen hoc perpetrantem non extendendum. [illegible] *n. 12. Menoch. conſ. 526 n. 12.* Quid verò cenſendum, ſi ex re patris quidem, operâ tamen & induſtriâ filii acquiſitum? & *Bar-*

tol.

tol. ait in d. l. cura [illegible] Partem [illegible] eſt, eſſe advent[illegible], quæ verò ex [illegible] quæ tamen diſtinctio rejicitur *à Bald.* [illegible] *all: pr. 4. [illegible] 2. n. 36.* dicendum puto [illegible] eſſe, acceſſionem [illegible] naturam [illegible] *11. §. 5 quæritur. 17. D. de al. emt.* [illegible] nec [illegible] manda, cum filius ex [illegible] reverentiæ paternæ [illegible] teneatur. *Schn: ad [illegible] 10. J. de* [illegible]

XL.

Finis hujus peculii eſt negotiatio filiifamilias.

Quemadmodum [illegible] reddere [illegible] ſive negotiis expon[illegible] *Mev.* [illegible] bam acquirat poſſeſſionem, quam per [illegible] hujus peculii, & [illegible] patri poſſeſſionem, [illegible] ſtatus non poſſe [illegible]

XLI.

Effectus eſt jus reſultans ex hoc peculio.

Quanquam [illegible] & [illegible] *ſi per quæ* [illegible] fuſum [illegible] patri [illegible] uſu & [illegible] & [illegible] de [illegible] *9. [illegible] 4.* [illegible] peculio [illegible] vel hoc [illegible] vivo. *d. l. [illegible] 4.* [illegible] *q.* [illegible] ad [illegible]

[illegible]

ſa adminiſtratio; non enim ad hoc ei libera peculij adminiſtratio conceditur, ut perdat. *d. l. 2. pr. & l. 1. §. 1. D. quæ res pignor. vel hyp. [illegible] dat.* Et regulariter quidem ita ſe habent; fallit autem quibuſdam in cauſis; ut 1. in mutuo, in quo neq; pater neq; filius obligantur, niſi in peculio caſtrenſi, de quo ſuprà 2. fallit in voto. *l. 2. [illegible] D. de pollicit:* quod tamen valere putat. *Mendez. d. t: in pecul. prof. n. 43.* ſi ſit Deo factum, & pater nõ ſtatim contradixerit. *per cap. 30. Numer.* taciturnitate enim pater conſentire videtur. *cap. [illegible], de R. J. in 6to* 3. In hæreditatis aditione, ex quà pater non obligatur, niſi expreſſe conſentiat: *l. qui in aliena. 6. in pr: D. de a. q: vel om. it: hæred: Harpr. ad §. item vobis 3 J. per quas perſon. [illegible] quir n. 9. [illegible] d. l. pr. 4. c. 3. n. 9.* Sicuti vero obligari poteſt pater, ita & conveniri, *actione* ſcilicet *de peculio*, cujus natura [illegible] in peculio ſervorum fuit explicata. Plura vide de hac actione *apud Schn: Zaſ: ad d. §. 10. de Act. Oldendorp: claſ. 4. Act. 7. & Schulz. Synopſ. J. tit. de Act. G.* ubi docet, quod noſtris moribus filijfam. mercaturam conſenſu patris exercentes, quoad negotiationem illam emancipati intelligantur, & per ſe obligari credantur; ita ut in patrem nulla eo nomine actio competat. Succedit autem pater filio ſolus in hoc peculio non jure hæreditario, ſed jure peculij *l. 2. C. de Pecul. caſtr:* Nihil enim in bonis profectitiis immutatum fuit, in quibus filiusfamilias nullum hæredem habere poterat. *Mendez. d. l. in pecul. prof. n. 50.* Et mortuo patre filius conferre hæc bona tenetur. *l. fin. 12. C. de Collat. l. 13. C. fam. erciſc. Mend. d. l. n. 60.* Niſi à patre ipſi prælegatum. *Bald. conſ. 4. 70. Tuſch. concl. pract. 197. P.*

XLII.

Reſtat ultima ſpecies peculij pagani (non quaſi caſtrenſis. *Bach. de act. diſp. & Corall. 2. Roman. de pecul. th. 11. A.*) quæ dicitur peculium adventitium.

XLIII.

Et definitur, quod ſita filiofamilias aliunde quam à patre, ſeu militia vel armatâ, vel togata acquiſitum.

Differentia ſpecifica [illegible] in hoc conſiſtit, quod [illegible] ex rebus paternis, neq; [illegible] publicis [illegible] §.2. *J. per quas perſ.* [illegible] induſtria [illegible] in hoc peculium [illegible] Quod ſi contingeret [illegible] gato, [illegible] *d. l. 6.* [illegible] ſpeciem [illegible] contingere [illegible] tris, ab ipſo patre data videntur. *l. 41. §. 4. D.* [illegible] *Harim Harim O. tit. 5. O. 12. n. 1.* &c. In [illegible] filij contemplatione quam patris relictum [illegible] *de* [illegible] Nihilominus autem [illegible] *pr.* [illegible]

XLIV.

Cauſa efficiens eſt vel remota, vel propinqua.

R[illegible] appareat [illegible] & [illegible] q[illegible] trem [illegible] p[illegible] ce[illegible] *C.* [illegible] Ju[illegible] te[illegible]

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[illegible] eſt induſtria ac opera filij, ſeu liberalitas aliorum. Contingit enim filios eſſe artifices, vel miniſtros aliorum, ita ut operibus ſuis aliquid [illegible] à contemplatione patris naneiſcantur. *Em: Mend[illegible] in pecul. advent. p. 2. n. 77.* ſeu ob merita ſua, aut ſpontaneo erga eos affectu à propinquis vel extraneis aliquid accipiant, quod omne in hoc peculium reputandum.

XLV.

Materia in qua ſeu ſubjectum, ſunt perſonæ habiles hujus peculij.

[illegible] quidem filiosfamilias oportet eſſe eos, quibus aliquid extrinſecus obvenit [illegible]. Hinc excluduntur emancipati, [illegible], qui non ſunt in patria poteſtate. *§. [illegible]: Inſt. de Nupt. En[illegible] 4. c. [illegible] n. [illegible]* [illegible] dicitur meliori conditione [illegible] legitimis, *Mendez. d. l. n. 105* Nihil tamen [illegible] in [illegible] baci vivant, [illegible] matrimonio. Matrimonium [illegible] enim non [illegible] [illegible] patriam poteſtatem. Quod [illegible] in filio. *Dum Carp[illegible] P. 2. C. [illegible]*. Non [illegible] [illegible] im patria poteſtate ex[illegible] [illegible] patris adhuc fruatur. *[illegible] 2* Adeo ut matrimonio ſoluto ha[illegible]quaquam in patriam poteſtatem [illegible] *B[illegible] n. 2. S[illegible]. [illegible] pat. poteſt. [illegible] l. ut. D.* [illegible] itaque filia non patri, ſed [illegible] acquirit. *Ra[illegible] 2. q. 2. n. [illegible] C[illegible] p. 3. Co[illegible] 20 deſin. [illegible] n. 6. & C[illegible] 6. n. 5. H[illegible] 1 q. 10 [illegible] 12* [illegible] filius etiam [illegible] longius [illegible] patre [illegible] [illegible] non vivat, [illegible] [illegible] acquiſitionem patri non auffert. *Carp. ib. d. [illegible] p. 1. n. 54.*

XLVI.

Materia circa quam ſeu objectum ſunt res.

Et [illegible] quidem huic peculio [illegible] illud, quod filiusfamilias acquirit [illegible] extra [illegible] ſecundum tradita *à [illegible] in l. ult. C. de [illegible]*

 vide

vide *Rachb. ad §. 2 J. per quas person.* [illegible] *Secundo* [illegible] *terna* ſive [illegible] hus [illegible] proavo [illegible] fecerat [illegible] ſuccesſionem [illegible] ſicuti hab [illegible] *Cod. Conſtan.* [illegible] *Imper.* [illegible] *materna* [illegible] quod in Ducatu vel comitatu [illegible] per [illegible] tis [illegible] eorum [illegible] patrem [illegible] Et d[illegible] quod [illegible] tate, ſitq; Dux ſeu Comes, quæ dignitas [illegible] à patria [illegible] berat. *Eman: Mendez. in proœm. prœf. n. 37.* Quod [illegible] & quidem multò magis in Rege [illegible] regnum [illegible] [illegible] dignitates, quibus aliquis exit [illegible] ſummo Principe fluunt. Abſurdum itaq; [illegible] ſervationem patriæ poteſtatis [illegible] eſſe. [illegible] Tertiò [illegible], bona hæc [illegible] [illegible] quæ ex matrimonio, dote, vel [illegible] n[illegible] ſponſalibusq; acquiruntur. *Schn: J. per* [illegible] *acqu: n. 19.* Et ea, quæ liberis ſeu donatione ſimplici, [illegible] hæreditate obveniunt, ut & quæ à patre filio d[illegible] enim donatio inter patrem & filium regulariter [illegible], ob benè merita tamen & alias quaſdam cauſas valet. [illegible] *c 8 n. 14.* Quartò illud, quod [illegible] ex [illegible] tranſactione, vel Judicis ſententiâ in compenſationem [illegible] dotum adventitium non profectitiam eſſe [illegible] *Mendez. d. tr. in pecul. adv. n. 78. Pinell. ad l. 1. C. de* [illegible] *n. 105.*

XLVII.

Forma hujus peculij ipſam eſſentiam conſtituit.

P[illegible] ad formam præter [illegible] [illegible] ex [illegible] pro[illegible]

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do *fi*[illegible] *con*[illegible]*mpl*[illegible]*tione patris* ad eum perveniat, ut regul[illegible]iter pa[illegible] [illegible] uſumfructum, fil[illegible] proprietatem habeat. *l. cum op*[illegible]*rtet. C. d*[illegible] *q*[illegible]: Itaque filio delictum committente hæc bona non veniunt in confiſcationem. Quia non ſunt ſimpliciter & omnino ex parte filij, patre ſcilicet in ijs uſumfructum habente, [illegible] quia confiſcatio ob delictum facta, quædam eſt alienatio, quæ filio interdicta. *l. fin. § finis autem. C. d. t. Gail: de P. P. l.* [illegible] *n. 37. Covarr: var. reſol. l. 2. c. 8. n. 7.* Quid verò patre delictum committente ſtatuendum? Tunc mortem naturalem vel civilem quando paſſus fuerit, uſumfructum finiri & cum proprietate conſolidari. *§. finitur & ibi Dd. J. de uſufr.* Sin minus in confiſcationem uſumfructum [illegible] uſufructuarij durante [illegible] ſtatuo *cum Sixtin de Regal. l. 2. c. 12. n. 70.* Quia com[illegible] & fructuum perceptio ab uſufructuario recte alienari poteſt *l. 12. §. 2. D. de uſ*[illegible]. Et conſequenter quoque con[illegible] *l.* [illegible]*per. D. de jure fiſci Boer. decis. 2. n. 4.* Dantur tamen aliquot [illegible], quibus plenum jus & proprietatem & uſumfructum fi[illegible] habeat; quos recenſet *Schneid: ad §. 1. J. per quam pe*[illegible] [illegible] *n. 5. & ſeq.* In quibus quoque patrem in [illegible] fiſco præferendum eſſe *cum Sixtin de Reg. n. 6*[illegible] *& T*[illegible] *de delict. & pæn. l. 1. § 5. q. 24. n. 6.* contra *Gail. de P. P. l. 2. c. 13. n. 37* cenſeo. Si autem pater habet uſumfructum, intelligendum hoc eſt de formali, & à proprietate ſeparato *P*[illegible]*ll: ad l. 1. part: 2. n 15. C. de bon. matern.* Et quidem [illegible] earum, quæ uſu conſumuntur, ob generalitatem textus *in l.* [illegible] *C. de bon. mat. l 4. & 6. C. de bon. q*[illegible] *Pinell.* [illegible] *p.* [illegible] *n. 4*[illegible]. Fructus autem [illegible] patri pleno jure acquiruntur, & de illis tanquam de proprijs diſponendi habet poteſtatem. *d. l. 6. §. 2.* Ni[illegible] filiusfamilias in peculio iſto habeat quoque partes metallicas, Bergtheil ſive Kuckus, earum proventus ſeu reditus (Ausbeute) [illegible] pleno jure, ſed [illegible] fructus tantum acquiruntur *Carpz: p. 3. c. 25. d. 1. &* [illegible] Et [illegible] uſufructus morte patris, [illegible] ſeu civili. *l.* [illegible] *§ cum autem. verſ. poſt obitum C. de bon. quæ lib. l. 16. §. ult. C.* [illegible]: Non tamen morte filij, uſusfructus enim morte uſufructuarij finitur non

verò

verò proprietati [illegible] *ab* [illegible] & tunc quidem [illegible] ba[illegible] tertiam [illegible] Hodie [illegible] domin[illegible] par[illegible] *tem.* [illegible] quæ tempore [illegible] hab[illegible] An autem pater [illegible] [illegible]um quoq; a[illegible]ta [illegible] liqu[illegible] af[illegible] Affirmati[illegible] *de* [illegible] Sed an [illegible] q[illegible] Negati[illegible] *Ord.* *D.* [illegible] *R.* [illegible] *n. 4.* [illegible] *D.* [illegible] *D.* [illegible] [illegible] *20.* [illegible] [illegible] illustr[illegible] *p. 2* [illegible] *n. 16,* Nil p[illegible] [illegible]

XLVIII.

Finis eſt, ut æqualitas ſervetur inter liberos atq; parentes.

Æqualitatem [illegible] matrem eſſe, dicit [illegible] *de* [illegible] *bon.* Quam quoque ſemper [illegible] paſſim [illegible] p[illegible] ver[illegible] in hoc p[illegible]o, quæ & [illegible] x[illegible], & [illegible] in [illegible] jus [illegible] *bon. quæ lib. &* [illegible] *7.* [illegible]

XLIX.

Effectus eſt jus, quod peculium hoc [illegible] cuique tribuit.

[illegible] Vi[illegible]

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[illegible] ? Et [illegible] eſt, patrem habere plenam [illegible] poteſtatem [illegible] rebus filij utendi [illegible] *l. 2. §. non autem C. de bon. quæ lib.* Adeò [illegible] ut ſi quid ex uſu earum rerum collegerit [illegible] cat pro lubitu diſponendi, atque in alios transferendi. *Frank. [illegible] 4. c. 4. n. 1.* Nec cautio à patre exigi poſſit; quia [illegible] cautionibus alijsque omnibus, [illegible] extraneis [illegible] *l. ult. §. ſin autem. [illegible] D. C [illegible] . 84. n. [illegible] . & p. 2. c. 1 [illegible] l. 9.* [illegible] propter generalitatem [illegible] *& l. cum oportet C. de bon. [illegible].* Quamvis alias cautionem [illegible] ſubſtantia quaſi uſusfructus [illegible] *Forſt [illegible] d. 8. ad Inſt. 8. 6 [illegible] 4. E. Treul. V. 1. d. [illegible] 9. [illegible] & [illegible] Bach.* contra *Fachin. [illegible] ad §. 2. I. de u [illegible].* Sunt tamen [illegible] tacite [illegible] ration maternarum bonorum [illegible] *4. C. [illegible] nd. Nupt. C [illegible] p. 2. C. 4. d [illegible].* Et jure Saxonico in genere, ratione omnium adventitiorum. *uti patet ex [illegible] 35* pr. verſ. Deßgleichen die Kinder. Imò ſi res [illegible] adhuc extent, & in patrimonio vel hæreditate reperiantur, jure domini omnibus alijs [illegible] creditoribus *d. [illegible] 4.* pr. verſ. oder es were den Kindern. Abſolutam itaque poteſtatem adminiſtrandi habet. *L. cum oportet. §. 2. C. de bon. quæ lib.* Neque refert liberos ad perfectam ætatem perveniſſe. *l. [illegible] §. 3. C. de bon. quæ lib. Dn. Carpzov p. 2. C. 10. def. 11. n. 1.* Et licet per teſtamentum patri ademtus ſit uſusfructus, nihilominus legitimus manet adminiſtrator. *l. ult. § 1. C. de bon. quæ lib.* N [illegible] teſtator rebus illis curatorem aſſignaverit. *d. def. 11. n. 1 [illegible] 11.* Neque adminiſtrationis rationem reddere opus habet. *d. [illegible] oportet. [illegible] b. part. 2. concl. 12. n. 23. Carpzov. part. 2. Conſt. 11. def. 5. n. 1. Dn. Groß Collec. Inſt. d. 1. q. 9. Muror. de Excubar. tr. de ratione admin. c. 30. n. 32.* Neque inventarium conficere. *Dan. Moll. ad Conſt. Elect. [illegible] 25. [illegible] 3. r. 6. S [illegible] p. Gentil. tr. de bon. matern. c. 11. Rauchb p. 1 q. 30. n. 32.* Aliter tamen res ſe habet in matre tutrice, quæ omnino tenetur ad inventarium, etſi legitima liberorum tutrix ſit. *H [illegible] g. p. [illegible] q. [illegible] n.* Ceſſant enim in matre rationes, quæ in patre militant, cùm non habeat in poteſtate liberos, & per conſequens nullum [illegible] in

 bonis

bonis earum. D[illegible] Quaprop-
pter ad inventarium [illegible] ad
ſecunda vota tranſiens tenetur. *Carpzov. p.* [illegible]
deficiente, bona [illegible] habere [illegible]
Carp. [illegible] *n. 3.* Porro pater [illegible]
to [illegible] ad Magiſtratus ad exercitium [illegible]
rum germanarum, etiam nomine [illegible]
d[illegible] ullo tutorio a[illegible]
Etiam abſque cautione rati [illegible]
tis [illegible] et ejus conſenſus requiratur [illegible]
m[illegible]rim. Carpzov. p. 2. [illegible] *10* [illegible]*4.* Aut pater [illegible]
ne[illegible] ag[illegible] *l. 4. D. qui* [illegible] Ita [illegible]
c[illegible]ratorem conſtituere poſſit. *Pinell.* [illegible]
dec. 1. q. 9. Omnes tamen litis expenſas tam magnas [illegible]
præſtare tenetur. *Caſtill. tr. de uſufr. c.* [illegible] *Carpz.* [illegible]
n. 1[illegible]. Quamvis autem pater habeat [illegible]
peculij hujus, naturalemque poſſeſſionem, [illegible]
Quippè naturaliter videtur poſſidere [illegible]
bet. [illegible] *pr. D. de acqu. vel am. poſſ.* [illegible] tamen [illegible]
reſpſiu[illegible] *l. 1. C. de bon. mat. L. 4. & ult. C. de bon. quæ lib.* Exceptis [illegible]
mobilibus immobilibusque [illegible] quæ [illegible] ſunt [illegible]
quocunque modo [illegible] periculo [illegible]
cum paternis [illegible] licet [illegible] *C. de bon. quæ lib.* [illegible]
æris alieni, alienare [illegible] & debet. [illegible] *4.* [illegible]
ſtra [illegible] debet. [illegible]
in §. præcedente. Ita ut primo mobilia, deinde immobilia [illegible]
non ſufficiant diſtrahantur. *d.* [illegible] *4.* Ad [illegible]
tionem decreto judicis non opus habet. [illegible] *§ 4.* [illegible]
F[illegible] *l. 6.* [illegible] *40.* [illegible]
tatu l. 1. D. de fundo dotali, pr. I. de [illegible] *hæred.* [illegible] *C. quando* [illegible]
Regulariter enim a quovis diſpoſitione [illegible]
ſiunt cauſa neceſſitatis *l. ult. C. de* [illegible]
de Laudem. c. 16. n. [illegible] *&* [illegible]. C[illegible] n[illegible]
conceſſa, & non tantum ſtricte accepta, per quam [illegible]
transfertur, ſed qualibet gravatio, e[illegible] pignoris [illegible]
[illegible]

[illegible] *l. quæcunq. 4. C. de bon. quæ lib.* Ideoque multò minus feudum concedere potest de ijs bonis, cum constitutio feudi ſit ſpecies alienationis. *[illegible] de feud. l. [illegible] c. 3. n. 5. Ritterſh. part. feud. [illegible] n. [illegible] &c.* Nec emphyteuſin concedere. *Enenk. priv. 4. c. 4. n. 5.* Sed an filius res a patre alienatas vindicare, aut pretium earum ex bonis perſequi poſſit? Quod quidem definitum videtur *in l. 4. C. de bon. quæ lib.* quæ non prohibendos ait liberos, quandocunque ſui juris fuerint, *nulla temporali præſcriptione obſiſtente,* easdem res omnibus modis vindicare, niſi forte poſtquam poteſtate parentium eos contigerit liberari, tantum tempus effluxerit, ut ex continuâ & inconcuſsâ tenentis poſſeſsione eorum intentio excludatur: quo caſu præſcriptio tricennalis ijs obſtat, ſi tamen & patriâ poteſtate ſoluti, & puberes ſint. *l. 1. junct. [illegible] ib. niſi tricennale C. de bon. mater. & ib. Pin. n. 42. Hartm. P. [illegible] O[illegible] v. 2[illegible] n. 8. 9.* Et ut rem ipſam vindicare, ita & pretium rei ex bonis patris perſequi poſſe nullum eſt dubium. *Enenk. [illegible] n. 9.* Filiusfamilias verò poſsidens hoc peculium, proprietatem ipſius quidem habet, alienatio tamen illud haudquaquam valet. *[illegible] ult. C. de bon. quæ lib.* Niſi cum conſenſu patris, quo caſu etiam mortis cauſa donare poteſt. *l. [illegible] § 1. D. de mortis cauſa don. Berl. p. 3. concl. 1. n. [illegible] Tr. [illegible] l. 2. [illegible] 10. § 2. C. & ib. Bach.* Teſtari verò nullo modo filiofamilias licitum, etiamſi pater conſenſerit, nec adjectâ clauſula codicillari. *F[illegible] p. 3. conſ[illegible] 1. n. 1.* Et quamvis, cum moritur, ſuæ poteſtatis fuerit; quia neceſſariò teſtamenti factionem debet habere tunc temporis, quando teſtamentum fecer[illegible] *t. pr. Inſt. quib. non eſt perm. f[illegible] teſtam. & [illegible] Harpr. [illegible] n. 15. & [illegible] cum alleg. Dd. Enenk. pr. 16. c. 2. n. 1. & 2.* Quid verò de rebus, in quibus pater uſumfructum non habet, ſtatuendum, an de his teſtamentum facere poſſit? Quod quoque negandum puto *per pr. I. Quib. non eſt perm. fac. teſtam. l. 6. l. 16. l. 9. D. Qui teſtament. facere non p[illegible] R[illegible] m. [illegible] ad 6. q. 2. F[illegible] lib. [illegible] c. 24. & 25. [illegible] chov. ad Tr. [illegible] § 2. l. 1. C. [illegible] add pr. I. n. 29.* de rebus tamen adventitijs in foro Saxon. liberis a parentibus ſeparatis, teſtamenti factio [illegible] conceſſa. *C[illegible] p. 2. c. [illegible] n. 5. Schult[illegible] Synop. [illegible] non eſt perm. f[illegible] teſtam.* Cæterum de rebus pleno jure ad eum pertinentibus pro lubitu diſponere & mor-

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& mortis cauſa donare abſque conſenſu patris [illegible] feudum conſtituere. [illegible] *Vultejus de feud.* [illegible]. N[illegible] vis modo contrahere. [illegible] *l.1.D.de S^to Mac.* [illegible] *D.de J.d.* Ita [illegible] reſpectu hujus pec[illegible]ij, [illegible] & ipſe patri [illegible] ceptione S^ti Mac[illegible].adverſus [illegible] tam [illegible], tueri poſſunt. *l. 1. & 9. D. de S^to Maced.* [illegible] *p.2.c.10.d.16.* Adeo ut huic beneficio [illegible] renunciari [illegible] poſſit. *Fachin.2.contr.61. & 62. Zang.de except.p.3.c.11.n.67.* [illegible] attingendum, quid circa collationem atque ſucceſſionem hujus peculij obſervandum? Qua de re ita [illegible], id peculij [illegible] titij collationem filium non [illegible] cogendum. [illegible] *S[illegible]hneidew. J.per quas perſon.* [illegible] *Emanuel* [illegible] *in pecul.adv.de coll.ipſius.n.78.* Quoad ſucceſſionem [illegible] fratres in eo ſuccedunt jure hæreditatis. *l.4.l.* [illegible] *C.de bon.* [illegible] Salvo tamen uſufructu patri. *l. 3. & 4.d.s.Riem.d.8.q.7.* [illegible] ſeu fratribus non extantibus parentes veniunt. *l.4.d.* [illegible] *in pecul.adv n. 79.* Jure tamen Novell. fratres pari[illegible] & matre ſuccedunt. *auth. defuncto. C. ad SCt Tertull. &* [illegible] *Hottom. Conſ. 20. n. 3.* Verum limitatur hæc ſententia *Jure Saxonico.* Defuncto enim filio ſine liberis ſuccedunt [illegible] & mater excuſis defuncti fratribus & ſororibus etiam [illegible] conjunctis. Quod idem obtinet in Avo, Avia & Proavo ac Proavia utriusque generis. *Schneidew. J. de Hæred. quæ ab inteſt. in Ord. ſecund. ſucced. n. 34. 35. Dn. Carpzov. p.3. C 17. d.6. 7.*

Tantum.

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